IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE SIDE.

CRIMINAL APPEAL NO. 487 OF 1996

The State of Maharashtra ..... Appellant

versus

Sou. Shantabai Mallawa Suresh Masal..... Respondent

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Shri B.H.Mehta APP for the State
Mrs. D.M. Shah advocate appointed for the respondent.

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CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATED : 18TH JULY, 2005

ORAL JUDGEMENT (Per Palshikar, J.) :

1.Being aggrieved by the judgment dated 16-3-1996 passed by the IIIrd Additional Sessions Judge, Kolhapur in Sessions Case No. appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2.With the assistance of the learned advocate appearing on behalf of the

appellant and the learned APP, we have srcutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Session Judge.

3. The prosecution story stated briefly ist hat the accused and the deceased were wives of the complainant Suresh Mhasale. Both the victim and the accused were found quarreling several times earlier. On the date of the incident i.e. In the night of 1st and 2nd March 1995, when the complainant came home, he did not find his wife Kusum and therefore he enquiried from the accused regarding the whereabouts of the victim Kusum. However, no answer was given by the accused. After making queries she told the complainant that the victim had gone out with one Tukaram to meet her parents. In the morning one Vithoba Koli, a neighbour of the complainant Suresh told him that there is a body hanging in the well of Bapu Patil. The complainant went there to discover the body was that of Kusum i.e. his wife. He therefore went to the police station and lodged the complaint. The complaint was very specific and he said in the complaint that he suspects that his wife Kusum has been murdered by his first wife Shantabai and Tukaram. He has mentioned in his complaint that he has complaint about Tukaram as a companion as he took his wife Kusum at 10.30 in the night of 1st March 1995 and murdered her by pressing her neck and throwing the dead body in the well. He states in his complaint that he also suspected his

wife Shantabai in this regard. It was on the basis of this complaint that the police undertook investigation, arrested the accused and prosecuted her alone. The prosecution examined as many as 16 witnesses to prove its case that it was the accused alone who committed murder. The learned trial Judge on appreciation of this evidence, came to the conclusion that the prosecution has failed to prove its case that the accused Shantabai murdered Kusum the victim. He therefore proceeded to acquit the accused by the impugned judgment. This appeal as aforesaid is directed against that order of acquittal.

4. Accepting the entire evidence of the prosecution, in the shape of oral testimony of 16 witnesses, confessional statement recorded by the Magistrate, recovery panchanamas to be correct all that the prosecution has established is following:

a)That there was quarrel between the accused and the victim.

b) That in the night of 1st March 1995 the victim was missing.

c) That the dead body of the victim was found in the well of Bapu Patil hanging to her own saree in a naked condition.

d) That there were dragging marks about 60 feet away.

e) That there were pieces of bangles at 60 feet away from the well.

f) That the death was caused due to strangulation.

g) That the doctor has proved two distinct legature marks on the neck

of the victim, and according to him one was post mortem and the another was ante mortem.

h) A stone weighing about 70 kgs. was found in the well on the platform and the body was hanging on saree tied to this stone at the neck of the victim.

5. It will be seen that the entire evidence in this case is circumstantial in nature, and consequently it was necessary as per existing principle of law for the prosecution to prove each link in the chain of circumstantial evidence. We have observed that the prosecution has proved the above quoted circumstances. The proof of those circumstances by themselves is not enough to connect the accused with the crime. She has denied the confession. The following circumstances in our opinion, are not proved by the prosecution. They are:

1)Motive for committing murder.

2)That after committing murder the body was thrown into well.

3)That after committing murder the clothes from the body of victim were removed.

4)How the accused who is about 25 years of age and not very stout personality could lift a stone of 70 kg. as also how could she lift or drag the dead body of Kusum alone.

5)Though the complaint specifically alleges involvement of Tukaram

and another, why no investigation was done in regard to that.

6. These aspects are not proved by the prosecution and even if the entire evidence if accepted as aforesaid, several important questions and circumstances remained unanswered. From the testimony of panch about the recovery of ornaments and clothes of the victim by the accused, it is obvious that the recovery is not proved. The witnesses very clearly stated that the accused never made a statement about the recovery. In fact therefore, the recovery is not proved and but for the recovery there is no connection between the accused and the victim and the crime. This case, in our opinion, is full of improbabilities and the learned trial Judge was right in such circumstances, in acquitting the accused for the crime with which she was charged. There is no plausible explanation as to why the accused would murder the victim and remove her clothes , dragged for 60 to 100 feet tied her to a stone weighing 70 kgs. and throw both the stone and the victim into the well. It is improbable that all these acts were done by the accused alone, even if it is to be assumed that it was in the same manner connected with the death. In such circumstances, reasonable doubt arises in the mind of an ordinary prudent man which so raised in the minds of learned trial Judge and he acquitted the accused. We see no reason in such circumstances to find any fault with the reasoning of the learned trial Judge as we also face the same problem on our reappreciation of the evidence. In such circumstances, no case whatever has been made out by the prosecution to

interfere in such circumstances. The findings recorded by the learned trial Judge are correct. We also quoted our own reasons for upholding those findings. In the result the appeal fails and it is dismissed.

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